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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 549

HARRY RENTON BRIDGES,
Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Harry Renton Bridges, respectfully prays that a writ of certiorari issue to review a judgment of United States Court of Appeals for the Ninth Circuit entered in the above entitled case on September 6, 1952.

OPINIONS BELOW

The opinion of the District for the Northern District of California is reported at 90 F. Supp. 989. The opinion of the Court of Appeals for the Ninth Circuit affirming the judgment below has not yet been officially reported; it is printed at Tr. 22-25.

JURISDICTION

The judgment of The Court of Appeals was entered on September 6, 1952. The order of the Court of Appeals denying petitioner's timely petition for rehearing was entered on November 18, 1952. On December 9, 1952 Mr.

Justice Douglas of this Court entered an order extending the time for filing a petition for certiorari to and including January 16, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

The Court of Appeals for the Ninth Circuit affirmed an order of the District Court for the Northern District of California revoking the citizenship of petitioner Bridges pursuant to 8 U. S. C. 738 (e) after his conviction for making a false statement in his naturalization proceeding.

There is this day being filed a petition for a writ of certiorari (No. 574) to review the affirmance of the judgment of conviction.

The questions presented here are:

1. Whether the conviction sought to be reviewed in that case should not be set aside and whether, therefore, the order here sought to be reviewed should not automatically fall with it.

2. Whether there was a lawful basis for the order of revocation since petitioner was not convicted of "knowingly procuring naturalization in violation of law" as is required by 8 U. S. C. 738 (e).

STATUTES INVOLVED

The relevant provisions of 8 U. S. C. 738 (e) upon which the revocation of petitioner's citizenship was based are:

> "When a person shall be convicted under this chapter of knowingly procuring naturalization in violation

of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is hereby conferred to the courts having jurisdiction of the trial of such offense to make such adjudication."

STATEMENT

Since, as indicated, the revocation order here sought to be reviewed arose out of and is dependent upon the conviction under review in No. 5748 there is no need to restate the factual background of the cases. We respectfully refer the court to the statement contained in the petition in that case.

After the criminal conviction had been returned, the Government moved for, and succeeded in obtaining over the opposition of petitioner, an order from the trial court declaring petitioner's citizenship revoked and a decree revoking, setting aside and declaring void the order admitting him to citizenship. (Tr. 3, 8; 90 F. Supp. 989).

Appeals from these orders were timely filed to the Court of Appeals for the Ninth Circuit which affirmed them on September 6, 1952. A petition for rehearing was denied on November 18, 1952.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred in affirming the trial court's revocation of petitioner's citizenship and in holding that petitioner had been convicted of knowingly procuring naturalization in violation of law.

REASONS FOR GRANTING THE WRIT

1. The petition for the writ in No. 548 shows the reasons why the conviction on a charge of making a false statement in the naturalization proceedings should be reversed and set aside. We respectfully refer the Court to the reasons for granting the writ set forth in that petition. The writ here should issue so that upon the disposition of that case appropriate orders may be made in this one.

2. Irrespective of the disposition of that case, there is an additional reason why the writ should be granted here.

Petitioner was not convicted of knowingly procuring naturalization in violation of law. Section 738(e) is a very carefully drafted statute. It does not provide that upon conviction for *any* violation of the nationality code citizenship may be revoked. On the contrary, it provides that revocation shall occur only upon conviction for "knowingly procuring naturalization in violation of law". These words are clearly words of limitation and must be strictly construed against the Government (*cf. Schneiderman* v. *United States,* 320 U. S. 118; *Baumgartner* v. *United States,* 322 U. S. 665, and *Klapprott* v. *United States,* 335 U. S. 601). If Congress had intended to authorize revocation for any violation of the Nationality Law, it would have not have inserted these words of limitation into Section 738(e).

Not only was petitioner not convicted of knowingly procuring naturalization in violation of law, he was not even charged with that offense. He was charged in the first count with conspiracy which is a separate offense and neither of the courts below predicated their holdings upon his conviction on the conspiracy count. He was charged in the

second count with false swearing in a naturalization proceeding. That charge is a different one from the charge of knowingly procuring naturalization in violation of law.[1]

In order to sustain its order of revocation, the trial court held that the conviction for one offense "constitutes" a conviction for the other (Tr. 10). The court below did not even consider the issue (Tr. 25).

The two offenses are separate and distinct. Knowingly procuring citizenship in violation of law is now to be found in 18. U. S. C. 1425, which is contained in Chapter 69 of Title 18, a chapter dealing exclusively with matters relating to nationality and citizenship. False swearing in a naturalization proceeding is now to be found in 18 U. S. C. 1015(a) which is contained in Chapter 47 of Title 18, a chapter dealing generally with false swearing and fraudulent statements and not specifically with naturalization or nationality matters.

Not only are these two sections separate and distinct parts of the code at the present time but throughout their entire history they have been separate and distinct (*cf. United States* v. *Bruno,* 25 F. Supp. 793 (D. C. N. J.)) and the added punishment of automatic revocation has always been applied only to the offense of knowingly procuring naturalization in violation of law and not to the offense of false swearing in a naturalization proceeding.[2]

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[1]The charge in the indictment did not depend upon the fact of procuring naturalization and was sustainable, irrespective of whether or not citizenship had been procured. *United States* v. *Bruno, infra.*

[2]Sec. 39 of the Act of March 3, 1903 (57 Cong. 2d Sess., Ch. 1012) (32 Stat. 1213, p. 22) provided

> "First: Any person who procures naturalization in violation of the provisions of this section shall be fined * * * and imprisoned * * * *and* the court in which such conviction is had

In 1938, for example, the two offenses were in separate codes, and even apart from the fact that automatic revocation followed upon conviction for illegal procurement and not for false swearing, they carried different criminal penalties. Thus, in *United States* v. *Bruno, supra,* the statutes are quoted which make it clear that the offense of illegal procurement was punished by a fine of not more than *$5,000* and imprisonment of not more than five years or both, while the offense of false swearing was punished by a fine of not more than *$1,000* and imprisonment for not more than five years. 25 F. Supp. 793 at p. 794.

In the foregoing case, the court said: "False procurement of naturalization and false swearing in a naturalization proceeding are entirely different. Under the view this court takes the defendant was guilty of an offense when he swore falsely in the naturalization proceeding. He committed another offense when he procured naturalization based upon his false swearing". *Ibid* at p. 794.

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shall thereupon adjudge and declare the order or decree and all certificates admitting such person to citizenship null and void."

"Second: Any person who * * * in any naturalization proceeding procures or gives false testimony as to any material fact shall be fined * * * and imprisoned * * *"

Section 23 of the Act of June 29, 1906 (59th Cong., C. 3592) (34 Stat. 596, p. 603), provided as follows:

"First: * * * Any person who knowingly procures naturalization in violation of the provisions of this Act shall be fined * * * and imprisoned * * * *and* upon conviction the court in which said conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void."

"Second: * * * Any person who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact shall be fined * * * and imprisoned * * *".

The Government might have, but it did not charge, petitioner with the offense of illegal procurement. It cannot now exact from him a penalty which attaches only to the uncharged offense. To impose a penalty for a crime not charged would be a "sheer denial of due process". (*Cf. De Jonge* v. *Oregon*, 299 U. S. 353 and *Cole* v. *Arkansas*, 333 U. S. 196).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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January, 1953.

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In the Supreme Court of the United States

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No. 549

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v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the court below (R. 22) is reported at 199 F. 2d 845.

JURISDICTION

The judgment of the Court of Appeals was entered on September 6, 1952 (R. 26), and a petition for rehearing was denied on November 18, 1952 (R. 27). On December 9, 1952, Mr. Justice Douglas entered an order extending the time for filing a petition for a writ of certiorari to and in-

cluding January 16, 1953. The petition was filed on January 14, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, assuming the lawfulness of a conviction of the petitioner for having made a false statement in his naturalization proceeding, the district court in which he was convicted had power, immediately after his conviction, to order his denaturalization, under 8 U.S.C. 738(e), as a person who had been convicted of "knowingly procuring naturalization in violation of law."

STATUTES INVOLVED

Section 338(e) of the Nationality Act of 1940, 54 Stat. 1158, 8 U.S.C. (1946 ed.) 738(e) provides:

> When a person shall be convicted under this Act of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

STATEMENT

At the time of the filing of the indictment against the petitioner Bridges, in the case now before this Court as No. 548,[1] a denaturaliza-

[1] The facts stated in that petition are incorporated here by reference.

tion proceeding was also instituted, pursuant to Section 338(a) of the Nationality Act of 1940, 8 U.S.C. 738(a). Action on this, however, was stayed pending the judgment of the trial court in the criminal proceeding (86 F. Supp. 931). After judgment against petitioner was entered in the criminal proceeding, government counsel filed a motion to revoke, set aside, and declare void the final order admitting petitioner to citizenship (R. 4). On June 16, 1950, a memorandum opinion and order were handed down (R. 3-7) relative to the denaturalization proceeding, and on June 20, 1950, a decree revoking, setting aside, and declaring void the final order admitting petitioner to citizenship (R. 8-12) was signed. The Court of Appeals affirmed the validity of the decree (R. 22).

ARGUMENT

1. The Government's memorandum on the petition for certiorari in No. 548 sufficiently deals with the issues as to the validity of the criminal conviction on the basis of which the order of denaturalization was issued. If the writ should be granted in that case, it is submitted that this petition should be held without action until the disposition of that case on the merits and then disposed of appropriately.

2. Petitioner also contends that he was not convicted "of knowingly procuring naturalization in violation of law," and therefore that the condition

for revoking citizenship set forth in Section 338(e) of the Nationality Act of 1940, *supra*, p. 2, has not been satisfied. He argues that Section 338(e) refers only to a conviction of the specific charge of procuring naturalization in violation of law as set forth in Section 346(a)(2) of the Nationality Act, and not to a violation of any other of the penal provisions in connection with the procurement of citizenship such as Section 346(a)(1), for violation of which petitioner was convicted.[2]

This interpretation of Section 338(e) does violence to its obvious purpose. If Congress had intended Section 338(e) to apply only to a violation of one of the many penal provisions under Section 346, it would undoubtedly have so indicated. The comments on the proposed draft of this Act submitted to the House Committee (II Hearings before the House Committee on Immigration and Naturalization on H. R. 6127, superseded by H. R.

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[2] The pertinent parts of Section 346(a) (8 U. S. C. (1946 ed.) 746(a)) are:

It is hereby made a felony for any alien or other person, whether an applicant for naturalization or citizenship, or otherwise, and whether an employee of the Government of the United States or not—

(1) Knowingly to make a false statement under oath, either orally or in writing, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization or citizenship.

(2) Knowingly to procure or attempt to procure—

a. The naturalization of any such person, contrary to the provisions of any law; or

b. Documentary or other evidence of naturalization or of citizenship of any such person, contrary to the provisions of any law.

9980, 76th Congress, 1st session, at p. 471) state as to Section 338:

> Proposed subsection (e) is a continuance of provisions now present in the naturalization statutes giving the Federal courts authority, as a part of criminal proceedings, to revoke the naturalization fraudulently procured and cancel the certificate of naturalization. * * *

This reveals the overriding policy of revoking the citizenship of anyone convicted under any of the penal provisions under circumstances which establish that naturalization was obtained either illegally or by fraud. It is specious to contend that a conviction of petitioner for false swearing in his naturalization hearing does not fully establish that he "knowingly procured naturalization in violation of law."

Section 338(e), moreover, is *in pari materia* with Section 338(a), which provides for a civil proceeding for the cancellation of naturalization on the ground of fraud or on the ground that such naturalization was illegally procured.[3] Section 338(a) covers any naturalization which was unauthorized

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[3] Section 338(a) (8 U. S. C. (1946 ed.) 738(a)) provides:

"It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

by law (*Maney* v. *United States*, 278 U.S. 17) or which was procured through fraud or other illegal contrivance (*Johannessen* v. *United States*, 225 U.S. 227). See also *Knauer* v. *United States*, 328 U.S. 654, 672-673. It is apparent that Section 338(e) was intended to make unnecessary the civil suit provided for in Section 338(a) whenever it is established by a conviction in a criminal proceeding that the naturalization of the defendant was obtained by any fraudulent contrivance in violation of law. The same bases for denaturalization which obtain under Section 338(a) also obtain under Section 338(e). The difference between the two sections is procedural, not substantive.

Since the burden of proof is greater in a criminal proceeding in which the defendant has the benefit of a trial by jury, it is unreasonable to suppose that Congress intended to require a retrial of the issues in a civil proceeding when fraud in obtaining naturalization by the giving of false testimony in the naturalization proceeding has been proved beyond a reasonable doubt by a conviction in the criminal action. It is clear that an alien who knowingly testified falsely, with an obvious view to facilitating his naturalization, would, under Section 338(e), knowingly have procured such naturalization in violation of the Nationality Act.[4]

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[4] The identical issue here involved was adverted to in *Klapprott* v. *United States*, 335 U. S. 601 (opinion of Mr. Justice Black) where it was said, at p. 610:

> 8 U. S. C. § 746 makes it a felony for applicants for naturalization or others to violate federal laws relating to

3. We believe also that petitioner's conviction on the conspiracy count of the indictment against him furnishes a basis for the revocation action. While this count charges a conspiracy to defraud the United States under 18 U. S. C. [1946 ed.] 88, which obviously is not part of the Nationality Act of 1940, nevertheless, the illegality of the conspiracy is predicated on a contravention of the statutory mandate of the Nationality Act. That Act prescribes the steps for obtaining naturalization in explicit terms. It was to subvert those explicit directions that the illegal combination in which petitioner participated was formed. It is sufficient to come within the provisions of Section 338(e) that the conviction establishes a crime the elements of which violate the express mandate of the Nationality Act for obtaining citizenship.

CONCLUSION

For the foregoing reasons, it is respectfuly submitted that the petition for a writ of certiorari be denied, unless the writ is granted in No. 548, in

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naturalization. Had petitioner been found guilty of making the false oath here charged, he could have been convicted of and punished for a felony under this section. But he could have been convicted only after indictment and a jury trial at which he would have been present and represented by counsel. A conviction would have required a proof of guilt beyond a reasonable doubt, on testimony of witnesses given in the presence of the accused who would have had an opportunity to cross-examine the witnesses against him. In the event of such a conviction under required procedural safeguards, § 738 (e) authorizes courts to revoke citizenship and cancel naturalization certificates.

which case this petition should be held without action until final disposition of that case.

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FEBRUARY, 1953.

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No. 549. BRIDGES *v.* UNITED STATES. On petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit. *Per Curiam:* The petition for writ of certiorari is granted. The judgment is reversed and the case is remanded to the District Court with directions to dismiss the proceedings. THE CHIEF JUSTICE, MR. JUSTICE REED, and MR. JUSTICE MINTON dissent for the reasons given in MR. JUSTICE REED's dissenting opinion in *Bridges* v. *United States*, 346 U. S. 209, decided this day. MR. JUSTICE JACKSON and MR. JUSTICE CLARK took no part in the consideration or decision of this case. *Telford Taylor* and *Norman Leonard* for petitioner. *Solicitor General Cummings, Beatrice Rosenberg* and *John R. Wilkins* for the United States. Reported below: 199 F. 2d 845.